

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on February 6, 2001
at 3:20 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Bob Story (R)
Rep. Carol C. Juneau (D)
Rep. Trudi Schmidt (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stacey Lietgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 445, 2/13/01; HB 107,
2/13/01
Executive Action: HB 350, HB 167, HB 338

HEARING ON HB 445

Sponsor: Dave Gallik, HD 52

Proponents: Gary Feland, Public Service Commission
Debbie Smith, Natural Resources Defense Council,
Renewable Northwest Project
Darrel Holzer, AFL-CIO
Patrick Judge, Montana Environmental Information
Center
Gene Fenderson, Montana Joint Heavy and Highway
Committee
Matthew Leow, Montana Public Interest Research Group
Rachel Haberman, Energy Share of Montana
REPRESENTATIVE CAROL JUNEAU, HD 85

Opponents: John Alkee, Montana Dakota Utilities Company
Ken Morrisison, PPL Montana
Tom Ebzery, Puget Sound Energy, General Electric,
Pacific Corp., Avista Corp.
Mary Whittinghill, Montana Tax Payers Association
Neil Colwell, Avista Corporation

Informational Witnesses: Pat Corcoran, Montana Power Company

Opening Statement by Sponsor:

REPRESENTATIVE DAVE GALLIK, HD 52, stated that this is one of the most important bills this committee will vote on during this session. The bottom line of this bill is a tax increase of about 4/10ths of a penny on the wholesale generation of electricity. This is commonly referred to as the Wholesale Energy Transaction, WET, tax. These funds will provide a rebate to Montana residents and small businesses when the price moratorium is over. This is actually an anti-tax-increase bill. This actually saves every resident and every small business money. We have to be able to justify to the people of the state of Montana that this is not a tax increase, rather it is an increase in the taxes which will provide that the money that is raised will then be used as an immediate rebate to those who are under the moratorium. This is a simple bill. It extends the rate moratorium to residential and small business use of electricity at the current rate. This will provide us the breathing room we need and the constant prices we deserve while we look at more long-term solutions.

Proponents' Testimony:

Gary Feland, Public Service Commission, said that the PSC unanimously agreed to support these efforts to mitigate the adverse effects of the unpredictable supplies and price of electric power, which may be suffered by many Montana rate payers. They think that it is important that this bill, along with many others, strive to lessen the blow of high-priced energy.

Debbie Smith, Natural Resources Defense Council, Renewable Northwest Project, stated that the particular portion that her organizations support is the portion that says that it would dedicate part of the funds to conservation and renewable power resources. This is a buy-down that will reduce power costs to MPC customers in the future. While that is necessary, it doesn't do anything to improve Montana's energy efficiency use or reduce the amount of reliance we place on large out-of-state producers. She would like to see the money go into the USBC fund and have the state use that money so that people can invest in energy efficiency improvements. That is what will reduce bills over the long term.

Darrel Holzer, AFL-CIO, said that more and more Montana workers are finding themselves unemployed because of this growing situation. For them to not only lose their jobs, but to also see a massive increase in their home electric costs is more than most people are going to be able to bear. They think that this is a step forward and a good approach in correcting that problem.

Patrick Judge, Montana Environmental Information Center, said that one of the things his organization is involved in is watching out for the small customers in Montana. They believe that this is a credible approach to providing a mechanism that will help mitigate the rate shock that Montana's small customers will be facing when the rate moratorium expires. They also believe this is an important step in the short term, but we are still in need of a more comprehensive overhaul of deregulation.

Gene Fenderson, Montana Joint Heavy and Highway Committee, supports this bill. If relief is not given there is no point in dealing with the subjects that they do because they will lose it in the electric bills. Not only will it be hurting their members and families, it will also be hurting the employers that they work for.

Matthew Leow, Montana Public Interest Research Group, said that this is a creative solution for our electric rate problem. This is a chance to help Montanans with their electric rates in the future, to help guard us from price spiking. This is a mechanism

where Montanans can enjoy the benefits of the surplus which Montana has. Montana is a net exporter of energy. Although this is a tax, in the end, people are going to get more than they put into it. That is because money will be coming in from out of state. He would like to encourage amendments that would help fund renewables and energy conservation. This is the way we will solve these problems in the future.

Rachel Haberman, Energy Share of Montana, said that there are 78,970 Montana households that had a total income below the 1994 poverty threshold. 12,822 of those were senior citizens over the age of 65. They support the concept in this bill to reduce the impact of price increases on the low income. When energy prices triple, Energy Share is going to have to help people that much more. People on fixed and low incomes pay anywhere between 15 and 25% of their income just to keep their heat on. When our energy prices go up, those incomes are not going to go up. She submitted supplemental information. **EXHIBIT(feh30a01)**

REPRESENTATIVE CAROL JUNEAU, HD 85, wanted to go on the record in support of this bill. She thinks that this is a great idea. We need to have advocates for consumers.

Opponents' Testimony:

John Alkee, Montana Dakota Utilities Company, opposes this bill as drafted. The way this bill is designed is the beneficiaries of the bill are the current customers of the Montana Power Company, but the bill applied a tax to every utility in the state of Montana that has generating facilities. MDU was exempted from deregulation and will likely continue to be as long as it is regulated in the state of North Dakota. This bill imposes a \$2.3 million increase. That rate increase will be transferred to the MPC customers. They have only 24,000 customers in eastern Montana, where they serve. If this bill passes it would be the same as mandating that each and every year, each of our Montana customers send a check for \$100 to underwrite the rates for the customers on the Montana Power System. He doesn't believe that was the intent of the drafter, or the wish of the legislature to impose such an unfair and unjust burden upon MDU.

Ken Morrisison, PPL Montana, said that they generate electricity in Montana and have over 500 employees. This bill represents a 2,800% increase in the wholesale electric generation tax. The WET tax is a special purpose tax enacted in 1999 to fund the property tax rate adjustments for electric generation property in Montana. The electric industry agreed to the narrow purpose of the tax, however, using the tax as a general fund mechanism for

PSC rate making is an expansion far beyond anything they expected or agreed to. Not only does this bill impose an excessively high rate, but it does so while they are providing power well below market prices to Montana customers through their contract with Montana Power. Placing an excessive tax on a few does not solve the power plant price concerns. They believe these concerns can best be addressed with an adequate supply of electricity in our region and long-term contracts. This tax increase will only serve to discourage construction of new generation facilities and other new manufacturing businesses in Montana.

Tom Ebzery, Puget Sound Energy, General Electric, Pacific Corp., Avista Corp., said that the WET tax was enacted last time, it was imposed upon a rate in order to make up for shortfalls and was not intended to be a revenue source for additional projects. Increasing something 30 fold is not a message that the legislature should send. It certainly would not encourage new generation in this state, or much of any investment in the state. They feel that this is a bad policy that sends a poor message. This is not the right solution to this problem.

Mary Whittinghill, Montana Tax Payers Association, doesn't believe that taxes are the solution. There are usually unintended consequences when you use tax reform. Utility taxes usually float through to a rate payer either here or elsewhere. Utility taxes are probably some of the most regressive taxes that you can use, in terms of your ability to pay.

Neil Colwell, Avista Corporation, said that Avista owns a portion of the coal generating plants and the dam on the Clark Fork River. Their projects in Montana were designed to serve the needs of the rate payers of their company in northern Idaho and eastern Washington. The plants that were built in this state were built as joint projects because it is a very capital intensive business. It is expensive to construct these plants. This is looking at imposing roughly a 30 times increase in a tax. Last year his company paid about \$500,000 on the WET tax, under this bill they would pay close to \$16 million. This increase will be passed on to their rate payers in other states. There are low income customers in those states as well.

Informational Testimony:

Pat Corcoran, Montana Power Company, submitted supplemental information. **EXHIBIT (feh30a02)**

Questions from Committee Members and Responses:

REPRESENTATIVE GARY MATTHEWS asked for **REP. GALLIK** to address the issue of MDU customers in eastern Montana. **REP. GALLIK** said that he was aware that it may have an impact on them. He thinks that we can deal with that impact and try to ensure that they are not caught up in this tax.

REPRESENTATIVE TOM DELL said that there was mention that this is being used as a PSC rate making mechanism. Is it accurate to say that this is another plan that you have in addition to SB 243?

Mr. Feland said that this would be used in setting the rates, but it would just be a pass through. **REP. DELL** said that his impression is that this is another direction that we could go, besides SB 243. **Mr. Feland** said that is correct. The tax would be figured in the rates to help lower them.

REPRESENTATIVE DEE BROWN asked if this is actually a tax on transmission rather than generation. **REP. GALLIK** said that the WET tax, in its current form, is on the generation, but it has some distribution parts to it. This bill has nothing to do with the mechanisms upon which the WET tax is taxed, who, and how it's done. That is not the point here.

REPRESENTATIVE ROY BROWN asked for clarification of the graph passed out by Mr. Corcoran. There is \$44 million that he is trying to figure out where it went. **Mr. Corcoran** said that difference is an amount that is left hanging because applying the rate that is specifically in the bill, the .4153 cents, against the kilowatt hours that are generated and sold, produces \$2.3 million more than the tax that is in effect today. Of the \$92 million that is collected on an annual basis, only \$48.2 million would be returned to customers.

REP. ROY BROWN asked **REP. GALLIK** to comment on the \$44 million they were discussing. **REP. GALLIK** said that he can't explain Mr. Corcoran's numbers because they don't make sense to him. It is his understanding that Mr. Everts used the price of 5.5 cents as a base amount that they are going to have to pay for power in the future, as opposed to Mr. Corcoran's 6 cents. **REP. BROWN** thinks there is a federal law that says that you can't unduly tax transmission that is going outside the state. **REP. GALLIK** commented that there is not a problem, nor does he believe that there will be a problem. The reason for that is because he has talked with both Mr. Everts and Mr. Petesch about that specific issue and they feel that we are on firm footing.

REPRESENTATIVE ALAN OLSON asked what effect this will have on coops. **REP. GALLIK** said that it is the intention of this bill that it not have an effect on coops financially.

REPRESENTATIVE BOB STORY asked if the sponsor had come up with the rate for the new WET tax. **REP. GALLIK** said that was a calculation that he asked Mr. Everts to do based upon the best information he had. **REP. STORY** said that possibly someone got confused by biennium and ended up with twice the tax that was wanted. **REP. GALLIK** said that was possible. That wasn't the intention and if that has happened, he will fix it. The intention was simply to provide the rebate to MPC customers. **REP. STORY** said that if the numbers work out as they show, then the other \$44 million will just go into the general fund, or does the sponsor have some design for how that money will be spent? **REP. GALLIK** said that if that is what the effect of this is, he would hope for an amendment to help ensure that those funds go where they are intended and that is to help alleviate small residential and business customers with the increase in electricity prices that they are going to see as a result of deregulation. **REP. STORY** asked how the sponsor expects the industrials to be competitive if they are having to pay an additional ½ cent per kilowatt hour on their electric bill to subsidize homeowners. **REP. GALLIK** asked **REP. STORY** to recall that after deregulation in 1997, everybody was given a choice except the small consumers. He would hope that there are longer-term solutions that assist with those who chose not to stay on the current situation that we have, but the bottom line is that someone is going to have to pay. **REP. STORY** asked for clarification on the sponsor's intent. Was it your intent that the whole \$24.75 increase would be absorbed by the rebate from the WET tax. **REP. GALLIK** said that it was, but he doesn't buy the \$24 part of it. He relied on staff to come up with the best information they could to make sure that the power bill stays the same.

REP. STORY asked Mr. Colwell, in a competitive market, who ends up paying the WET tax. **Mr. Colwell** said that it ultimately is the consumer. The initial impact is on the company.

REP. DELL is concerned this will stifle any incentive into a long-term solution to the energy crisis. **REP. GALLIK** doesn't think that **REP. DELL**'s concern is a false concern. It is a concern that we need to look at conjunctively, long-term more power generation versus short-term price right now. Considering that we export 60% of the power generated in Montana, he is not sure that we have a power supply problem, but he does understand that one solution would be to build more generation. Discounting the solution offered in this bill is not the way to go.

REP. MATTHEWS asked if there was any way for MDU customers to be excluded from this WET tax. **Mr. Alkee** said that the original WET

tax was design as an offset to the reduction in property taxes. In order for MDU to be excluded, it would have to specifically say who this would be applicable to.

REPRESENTATIVE CAROL JUNEAU asked if MPC participated in the business equipment tax breaks that were given last session, and if so, how much money did they save. She also asked if those stranded costs will be included in the out-of-state sales.

Mr. Corcoran didn't know if they participated in the business equipment tax breaks. The original stranded costs were established in SB 390. At this point in time, as a result of the sale of MPC generation, they sold the generation facilities they had above book value. The gain on that sale is returned to customers in the form of offsets to any of the stranded costs that would remain from the MPC standpoint. As a result of the net gain on the sale, the single stranded cost item that remains today is the cost of their qualifying facility contracts. **Mike Pichette** said that MPC didn't participate in the business equipment tax break.

REPRESENTATIVE TRUDI SCHMIDT asked, in the TAC committee, what the PSC was endorsing to get out of this situation. **Mr. Feland** said that the PSC is going to support anything that will help alleviate the impact that is going to come with the end of the moratorium. They will be willing to work with anyone who might have an idea to help mitigate some of the impact on all of the rate payers.

REP. SCHMIDT asked if the sponsor thought that this bill could work with SB 243. **REP. GALLIK** said that he absolutely thinks that it can. His concern with SB 243 is whether or not it is actually going to do something. The only thing that it will do will be to provide rigidity in the law, it will not allow the PSC the flexibility that is necessary when dealing with a changing problem like we have today.

REP. STORY asked for Ms. Smith to comment. **Ms. Smith** said that the particular part that her organizations support is the part that isn't in there yet, but will be amended in and that is that a certain portion of the rate rebate be directed toward load reduction and new resource measures. The information that **REP. GALLIK** got through legislative staff, at the time the bill was drafted, was quite accurate, but the price for long-term power contracts is changing almost every day.

Closing by Sponsor:

REP. GALLIK hopes that the committee will give this some consideration and allow the debate to continue. It was the consumers and those who work with the consumers who have come forward as proponents. He is all for business, but the bottom line is: Who is going to pay? The prices are going to go up. This is a piece of the puzzle that needs to be left on the table. Something can be done to exempt MDU from this tax.

EXECUTIVE ACTION ON HB 350

Motion/Vote: **REP. CURTISS** moved that **HB 350 BE TABLED. Motion carried unanimously.** This was done at the request of the sponsor.

EXECUTIVE ACTION ON HB 107

Motion: **REP. JUNEAU** moved that **HB 107 DO PASS.**

Discussion:

Mr. Maly passed put a gray bill and supplemental information.
EXHIBIT(feh30a03) EXHIBIT(feh30a04)

Mr. Lane said that FWP's concern with the bill is that they were afraid it wouldn't allow a sub-grantee program to meet federal aid requirements. They don't take a position on the policy of the bill. It does require a reallocation of funding.

REP. DEE BROWN clarified that **Mr. Lane** brought it into compliance with federal language. **Mr. Lane** said that was correct.

REP. SCHMIDT asked about the fiscal note. **Mr. Maly** said that this is the fiscal note from last session. **REP. EGGERS** felt that it is a more accurate reflection than the one that was received with the bill.

REP. CURTISS clarified that the gray bill has the amendments in it. **Mr. Maly** said that was correct. He didn't prepare the gray bill, but he would take it on trust that the gray bill reads correctly. **REP. CURTISS** said that they were told in judiciary that they couldn't be provided gray bills. She asked if anyone had information on that. **REP. STORY** said that we had one, it sure helps the process.

Mr. Maly reminded the committee that the fiscal note is from last year, the one provided with the bill doesn't include the amendments.

REP. OLSON asked Mr. Lane if the Department of Fish, Wildlife and Parks could do this without the bill on some sort of cooperative agreement. **Mr. Lane** said that they could. There is nothing to prevent that under current authority. There may not be the same mandates in terms of the amount. **REP. OLSON** asked if he was aware of what the tribes currently spend their license fees on, as far as game management. **Mr. Lane** wasn't sure that some of the tribes had many resources as far as licensees. He believes some intend to increase that revenue. **REP. JUNEAU** wasn't aware of what all the tribes use the fees for.

REP. STORY had some concerns about the mechanism's operation. He doesn't know what determines that they have to spend any of it. There is no criteria for the programs they can fund.

REP. SCHMIDT said that testimony at the hearing referred to technical problems. She asked Mr. Maly if he knew what the differences are in the amendments. **Mr. Maly** referred to Exhibit 4, that is the only information that he has dealing with the problems between the sponsor and the department.

Motion: **REP. JUNEAU** moved that **AMENDMENT TO HB 107 BE ADOPTED.**

Discussion:

REP. SCHMIDT said that the memo says that they don't need amendments 13 and 31. **Mr. Lane** said that the memo is correct. He spoke to **REP. EGGERS** and he is fine with taking them out.

Mr. Maly said that there was an earlier set of amendments that was dropped for the current amendments. The reference to 13 and 31 is for those amendments, not the current ones.

Mr. Lane said that the gray bill that he was given didn't have 13 and 31 in it.

REP. STORY said that 13 is inserting the word "and."

REP. SCHMIDT said that Mr. Lane said that they aren't in the gray bill.

REP. DEE BROWN thinks we should wait until **REP. EGGERS** can be here. **REP. JUNEAU** would also like **REP. EGGERS** to be here.

REP. STORY thinks that we can do this without the sponsor. The amendments are fine.

Motion/Vote: **REP. JUNEAU** moved that **AMENDMENTS TO HB 107 BE ADOPTED. Motion carried unanimously.**

Motion: **REP. JUNEAU** moved that **HB 107 DO PASS AS AMENDED.**

Discussion:

REP. OLSON said that FWP can already do this without this bill.

REP. STORY said that he hoped that we wouldn't have to pass a bill to get FWP and the tribes to set up some kind of an agreement as to the distribution of this money, since clearly some of it is paid by tribal members.

REP. JUNEAU said that **REP. EGGERS** had worked for two or three years on this project. She is sure that he would not have proposed legislation for something that could already be done.

Motion/Vote: **REP. JUNEAU** moved that **HB 107 DO PASS AS AMENDED. Motion failed 5-7 with Dell, Forrester, Juneau, Matthews, and Schmidt voting aye.**

By committee consensus the vote was reversed to table HB 107.
REP. JUNEAU voted no.

EXECUTIVE ACTION ON HB 167

Motion: **REP. DELL** moved that **HB 167 DO PASS.**

Discussion:

REP. DELL passed out a letter from MPC. **EXHIBIT(feh30a05)** He feels that the logistics of this bill would be a nightmare. Practically speaking, he has some real concerns about putting this into place and making it something that is fair. He will oppose this bill.

REP. STORY said that the definition of corporation is too broad. What are the corporations in that section? **Mr. Maly** said that it is all nonprofit corporations.

REP. MATTHEWS proposed an amendment to strike line 11, and include the community colleges that are not part of the university system.

REP. DEE BROWN would like to add tribal colleges if it is needed.

REP. JUNEAU said that she would decline to include tribal colleges in the amendment. They benefit a lot from low income energy programs on the reservations. She thinks that we should pay for that. She doesn't agree that this is going to help people. She doesn't think that groups should be exempted from this.

REP. MATTHEWS stated his amendment again. This is a bill for eastern Montana. He will support the bill.

Motion: **REP. MATTHEWS** moved that **AMENDMENT BE ADOPTED**.

Discussion:

REP. FORRESTER clarified that the customers served in the MDU area wouldn't be eligible for any of the low income benefits and they would lose benefits that other customers would be paying for. **Mr. Maly** sees the bill as amended exempting certain entities that pay this charge everywhere. It doesn't exclude MDU at the moment, but the effect of removing the charge against these entities brings relief to those entities in eastern Montana, as well as elsewhere in Montana.

REP. OLSON agrees with **REP. MATTHEWS** that we should include the community colleges. He would back the amendment and wishes that **REP. JUNEAU** would reconsider and include the tribal colleges.

REP. ROY BROWN clarified that the amendment would eliminate line 11. **REP. MATTHEWS** said that is correct. **REP. BROWN** asked, if the hospital is a nonprofit corporation, are they still exempt. **REP. MATTHEWS** said that, by making this amendment, he was trying to alleviate **REP. STORY's** concern, but still keep in the health care facilities, hospitals, public schools and university systems. **REP. STORY** said that they have to be county hospitals.

Motion/Vote: **REP. MATTHEWS** moved that **AMENDMENT BE ADOPTED**.
Motion carried 11-1 with Mood voting no.

Motion: **REP. DELL** moved that **HB 167 DO PASS AS AMENDED**.

Discussion:

REP. DELL said that this is not precise enough as to what they want to address in terms of the utilities and trying to administer it.

REP. STORY said that it is cumbersome in its operation.

Motion/Vote: **REP. DELL** moved that **HB 167 DO PASS AS AMENDED**.
Motion carried 8-4 with Brown, Dell, Juneau, and Schmidt voting no.

EXECUTIVE ACTION ON HB 338

Motion: **REP. JUNEAU** moved that **HB 338 DO PASS**.

Discussion:

REP. STORY said that this is the kind of bill that has a lot of unintended consequences. This definition applies to the whole criminal code. He has no idea what this bill will do, so he can't vote for it.

REP. FORRESTER asked if it would be possible to re-refer this to the judiciary committee.

Motion: **REP. FORRESTER** moved **TO REFER HB 338 TO THE JUDICIARY COMMITTEE**.

Discussion:

REP. JUNEAU said that rather than having the whole hearing wasted, this motion should have been made at that time. This is inconsiderate and inconvenient.

REP. ROY BROWN said that there will have to be another hearing on this bill. It is an inconvenience to those involved in the bill. He will oppose that motion.

REP. FORRESTER said that it takes a 3/5 vote to take it off the table.

REP. CURTISS has reluctance referring it to the judiciary committee because they are so far behind.

REP. MOOD said that this committee has seen a number of bills that should have gone other places, the committee has taken those bills and done the best that they could with them. For the most part the committee has been very flexible. This bill is

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

February 6, 2001

PAGE 14 of 15

something that they can't deal with because they don't have the expertise.

REP. OLSON said that he can't support this because he doesn't know the whole impact of this.

REP. MOOD said that if they send it to judiciary and they don't have time that will be the same effect as if the committee tabled the bill.

REP. DEE BROWN said that REP. JAYNE would just as soon have judiciary hear this bill. We should try to get it over there for her.

Motion/Vote: REP. FORRESTER moved TO REFER HB 338 TO JUDICIARY.
Motion carried 10-2. No vote record available.

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. AUBYN A. CURTISS, Chairman

ROBYN LUND, Secretary

AC/RL

EXHIBIT (feh30aad)